



Forest Service Ethics Newsletter



Summer 2011

HATCH ACT— Don't let this Be You...(A "Could Be" True Story)

Joe did not take the Hatch Act training our office offered for several months. And he certainly did not contact our office for advice before he invited subordinates and co-workers to a political fundraiser his wife organized. An anonymous phone call resulted in an investigation by the Office of Special Counsel (OSC) which in turn was now recommending Joe be removed from Federal Service. Joe was 2 years from being able to retire. The OSC provides advisory opinions and enforces Hatch Act provisions on permissible and impermissible political activity by government employees. It is the only agency authorized to prosecute violations of the Act, which are adjudicated by the Merit Systems Protection Board (MSPB).

As I told Joe's supervisor on the phone "The Office of Special Counsel found his violation to be serious enough to request the Merit Systems Protection Board to remove him from federal service. If it is determined Joe violated the ban on Federal Government employees fundraising in a partisan political campaign only a unanimous vote from the MSPB can keep him from being fired." As I hung up the phone I thought about how harsh the Hatch Rules can be. Joe was not being criminally prosecuted, but his punishment, losing his job, was also serious.

The lesson of this story: ask your ethics advisor if you want to be politically involved.

HATCH ACT RESOURCES:

Office of Special Counsel: <http://www.osc.gov/hatchact.htm>

OSC Advisory on the Displaying Photos of President Obama now that he has announced his Re-Election Candidacy

- [OSC's Guidance on Social Media \(Facebook\) and the Hatch Act](#)
 - [Voter Registration Drives in the Workplace](#)
- [Use of Electronic Messaging Devices to Engage in Political Activity](#)
- [Questions Frequently Asked of the Office of Special Counsel](#)

Special Points of Interest:

- The Hatch Act
- The Training Corner
- Ask Abby (Endorsement)

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OGE-450 Corner

Filer's Tip: **How to Properly Report Life Insurance on your OGE Form 450**

Universal: Filers report the name of the insurance company on Part I, specifying that the asset is universal life insurance.

Variable: Filers report the name of the insurance company, the type of insurance, and the reportable underlying assets on Part I

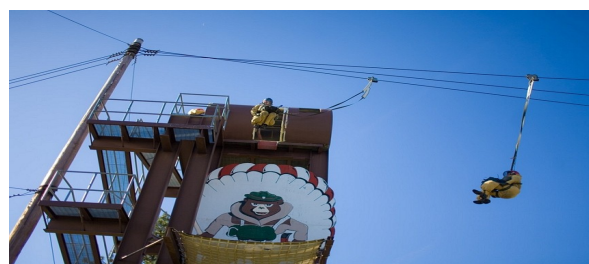
Whole: Filers report the name of the insurance company on Part I, specifying that the asset is whole life insurance

Variable Annuities: Filers must disclose the name of the company and the reportable underlying assets on Part I.

Term Life Insurance: Filers do not need to disclose Term Life Insurance (per the instructions on the form)



THE TRAINING CORNER



We at FSEB believe that training is a proactive means to keep federal employees out of trouble. FSEB will be offering monthly training in several venues in the hope that making ethics training more available will allow all of you to partake. Our training will meet a new employee's requirement for training and an annual filer's training requirement. We also offer tailored ethics training to any unit interested in a specific area of ethics. So mark your calendars!

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|---------------------|--------------------------|---------------|---------------------|
| Tuesday, Aug 11 | CFC/Hatch Act E-meeting | 12:00—1:30 PM | |
| Tuesday, Sept 20 | CFC/Hatch Act E-meeting | 12:00—1:30 PM | |
| Thursday, Sept 29** | CFC/Hatch Act Live/E-Mtg | 2:00—3:30 PM | Yates Training Room |
| Tuesday, Oct 11 | TBD E-Meeting | 12:00—1:00 PM | |

***Note—the September 29th Training will be both a Live Training event from the Yates Bldg and E-Meeting open to remote listeners Forest Service wide.*

All Times are Eastern Standard Time

Per USDA Designated Agency Ethics Official (DAEO) direction, and in accordance with 5 C.F.R. § 2638, all ethics training (with the exception of AGLEARN Training Modules) MUST be conducted by a qualified ethics advisor/instructor. (Thankfully, Jack and Rainee are two such qualified individuals)

To arrange individualized ethics training or ask general questions please send an email to FSEthics@dm.usda.gov

Misadventures in Ethics: (You might be violating the ethics rules if...)

Email Shenanigans Lead to Federal Employee's Termination and Prosecution Under Wiretap Act.

YOU HAVE BEEN
HACKED !

The defendant, a federal employee, found himself in an employment pickle. His driver's license had been suspended for driving while drunk. This threatened his job because, as a revenue officer, the defendant was required to travel to

delinquent taxpayers' homes. Worried that his driving woes might be discovered, he decided to monitor his supervisor's email messages.

His supervisor discovered his activities by accident while receiving training on how to use Microsoft Outlook, she discovered a "rule" that directed Outlook to forward all email messages she received to the defendant.

For his efforts, the federal employee was terminated and convicted for violating the federal Wiretap Act by intentionally intercepting an electronic communication.

Two Cases of Accepting \$\$ in Exchange for Official Action = BRIBERY Convictions



1) A former correctional officer at the Federal Medical Center in Rochester was sentenced to 8 months confinement for accepting \$5,000 in bribes (betraying public trust) from two inmates' families. See DOJ press release at http://www.justice.gov/oig/reports/press/2011/2011_03_08.pdf.

2) Puerto Rico Senator Hector Martinez Maldonado and Juan Bravo Fernandez, the former president of one of the largest private security companies in Puerto Rico, were convicted by a jury for their roles in a bribery scheme, where the Senator received lavish gifts and travel in exchange for official acts (like beneficial legislation). See DOJ press release at <http://www.justice.gov/opa/pr/2011/March/11-crm-289.html>



Taxes? I Don't Need to Pay No Stinking Taxes! (The IRS and Department of Justice (DOJ) beg to differ)

The following is a summary of a tax case involving a federal employee who willfully did not file her tax returns. If you want to read the full story, read the press release (link above) from the Department of Justice.

According to the statement of facts, the defendant admitted that beginning in 2002, and continuing each year through approximately 2009, at the direction of her husband, she presented a letter to her payroll department directing her employer to stop withholding federal income taxes from her salary. The defendant further admitted that between 2002 and 2009, at her husband's direction, she willfully committed the following acts: sending a document to the IRS claiming that she was not a person required to file federal income tax returns; recording in Fairfax County, Va., a **"Declaration of Independence by Public Notice"** claiming that she was **"not a party to the Constitution of the United States of America"**; sending correspondence to the IRS claiming they could not instruct her employer to withhold taxes from her paycheck; and sending certified letters to the Defense Finance and Accounting Service (DFAS) and IRS advising that she is not a taxpayer.



Ask Abby the Ethics Hound (*Tracking Down the Answers to your Ethics Questions*)



Abby The Ethics Hound

Question—Endorsement: Hey Abby—I've heard of several different instances where Forest Service employees were considered to be improperly endorsing Non Federal Entities (NFE's). Can you discuss the different ways in which a federal employee may expressly or implicitly violate this regulation?

Answer: Certainly! The regulation pertaining to your endorsement question can be found in the section titled Appearance of Governmental Sanction [5 C.F.R. § 2635.702](#). Thankfully for you, I am fluent in "legalese", let me translate for you. This section of the regulation essentially says that federal employees are prevented from using (or permitting the use of) their government title, authority, or position in a manner which could be reasonably understood to imply that the agency or the government "sanctions or endorses" a product, service, or enterprise (person, organization, event, etc.).

Sounds pretty straightforward right? Well, perhaps when it comes to express endorsement which is easy for us to conceptualize (pick your favorite sports hero and you could probably think of a commercial where s/he endorses a specific product or service). But what about situations where the appearance of government endorsement is less obvious?

Consider for a moment the subtle, yet important, difference between official informational-type-notices (think about official emails, posters, flyers, etc.) which merely provide information about a NFE or notice of an event versus an official notification which can be construed as improperly endorsing an NFE or event.

The following is an example of an email sent from a Forest Service employee to his entire forest regarding a NFE event: "*The **NFE Organization**, one of the volunteer wilderness stewardship organizations that the Forest Service works with closely, will be hosting the a Celebrate the Mountain Festival, here in Centraillia on May 7th beginning at 9am. There will be an admission fee with all proceeds benefiting the organization. This organization works **selflessly** and **tirelessly** to provide significant support to the Forest Service. I **urge** you all to come out and show your **support** for such a **worthy cause** and **deserving NFE**". **Outcome:** This email notification constituted impermissible government endorsement (note the words praising or extolling the virtues of the NFE and words encouraging attendance and support).*

While it is permissible, with supervisor approval, to distribute information of common interest to Forest Service employees we must take caution in the manner in which we 'get the word out'. You see, no matter how worthy the entity or event may be, we as an agency, must maintain neutrality with regard to non-federal entities and events. Any words of praise an organization may give the appearance that the Forest Service favors this organization to the exclusion or detriment of others. Since the government cannot endorse all worthy organizations equally, we must praise none of them. This practice prevents us from both unpermitted government endorsement as well as the appearance of public office being used for private gain. Thus, all words of praise for a NFE or event should be left out of informational notices. For similar reasons, encouraging or recommending that agency employees attend a NFE event should also be avoided which can be done through refraining from using words in notices like: "endorse," "support," "encourage," "recommend," and "urge,".

It is worth noting that even in the absence of the 'buzz' words listed above an email or other official advisement can be construed as improperly "encouraging" employees to attend an NFE event and thus run afoul of the prohibition on endorsement. Make sure your office has an established policy for sending out notices regarding the local NFE activities. The notices should also come from one source (e.g. a generic electronic email or bulletin board) so that the NFE activity is presented as purely informational and the appearance issue of endorsement is minimal.

Forest Service employees should work with their Public Affairs Representatives and contact the ethics branch if they have questions regarding endorsement. (See Also [DR 1470-001](#))

Other Examples of Endorsement Within the Forest Service:

Endorsement (Product Promotion): National Forest Foundation, Forest Service and Subaru: Some of you may recall an agreement between these three entities whereby the Forest Service would receive Subaru vehicles (Foresters) in exchange for product promotion (using the vehicles in NF's where they would be featured prominently and the use of Smokey Bear to distribute Subaru literature at 10 auto shows along with other duties). **Outcome:** Due to endorsement/product promotion issues under USDA and ethics regulations (among other reasons) the agreement was dissolved.

(Continued from Page 4)

Official Endorsement of a NFE's State Application: A Forest Service Archeologist, upon request from a state agency, provided a letter in support of the Native groups application for official state recognition as a Native American Indian Tribe, on Forest Service letterhead, referencing her name title and position, which stated in her opinion the Native group met the State-established criteria sent as an attachment from her government email account. **Outcome**—this constituted impermissible government endorsement. However, it would have been proper, for the archeologist, in her personal capacity, to provide a letter of support on personal stationery and via her personal (not government) email account, a letter of support as an experienced archeologist so long as she does not reference Forest Service title or position—or allow outside groups to use them to directly or indirectly suggest her office, the agency, and the government endorse or sanction their groups or initiatives.

Personal Affiliations that Constitute Implicit Endorsement:

- Forest Service employee's name listed on local trail association website referencing her Forest Service position and title (I. M. Hardcharger, District Ranger, XYZ National Forest, U.S. Forest Service **(Impermissible)**).
- Forest Service Employee's name listed (no reference to official position) with a hyperlink to his Forest Service email **(Impermissible—the use of his official Forest Service email address creates the appearance that the Agency endorses or sanctions the NFE and its activities. Additionally, it should be noted that sending or responding to emails from your official government email account on matters of personal business during duty hours is not permitted under the Departments existing telecommunication policy constituting implied endorsement as well as misuse of Government resources (personal business shall not be conducted during work hours and utilizing government email). Further such use is not what is contemplated by “limited personal use” of the [Department's Telecommunication Policy DR 3300-001](#)).**
- Forest Service Employee utilized government web space to host a website for a local soil conservation group (Non-federal entity) **(Impermissible—By virtue of appearance a neutral observer could construe that the government endorses or sanctions the group and its activities).**

Did You Know?

- Did you know—That Federal employees are protected from disciplinary action when they rely in good faith on the advice of an ethics official under (5 C.F.R. § 2635.107 (b))? Note however, this does not include Hatch Act or the criminal statutes under 18 U.S.C. § 201-209.
- Do you know what constitutes **inappropriate personal use of government equipment and services** under the [Department's Telecommunications and Internet Services and Use policy](#)? You cannot use your government email to forward that funny video file your friend sent you to the entire Forest. You cannot use government equipment, internet, and email to fundraise for your favorite organization. For a list of inappropriate personal use of government equipment and services, see pages 20-26 of the following: [DR 3300-001 March 23 1999](#).
- Did you know that FSEB does not have any investigatory powers? FSEB will provide supervisors (line officers, etc.) with ethics advice on whether ethics statutes or regulations have been violated and to what degree. Criminal matters should be reported to the Office of the Inspector General and/or Law Enforcement. Non-criminal matters should be handled administratively.
- Did you know that there is a new Gift of Travel Guidance (issued 28 January 2011) which includes new procedures, deadlines, and forms. Outdated forms (AD-1101's) will not be accepted (see the article in our [previous newsletter](#)) Forms are available on request and on our intra-site.
- Did you know that you can violate the conflict of interest statutes even where you do not receive compensation (*we've heard “but I did not receive any money” once to often and feel the need to set the record straight*). **Look for an article on this issue in our Fall newsletter.**
- Did you know that you need to have your Combined Federal Campaign (CFC) event reviewed and approved by the Ethics Branch? (See question 2 on page 10 of our previous [newsletter](#) and look out for upcoming CFC training late summer/early fall 2011)



**Forest Service Ethics
Branch**
1601 N Kent Street
Suite 600, RPC
Arlington, VA 22209
FAX: 703-605-4923



Science Ethics Branch
5601 Sunnyside Avenue,
Rm. 2-2290
GWCC Mail Stop 5620
Beltsville, MD 20705-5620

Fax Number:
301-504-1496

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FOREST SERVICE ETHICS BRANCH:

Lorraine "Rainee" Luciano, Branch Chief Tel: 703-605-0858

Jack Edward Fisher, Ethics Specialist Tel: 703-605-0877

Bobbie Salone, Ethics Assistant Tel: 703-605-0860

FSEB Website:

<http://fsweb.asc.fs.fed.us/HRM/ethics/policy.php>

Got an Ethics Question or Training Request?

Send us an email at FSethics@dm.usda.gov

SCIENCE ETHICS BRANCH :

Sue Sheridan, Branch Chief Tel: 301-504-1442

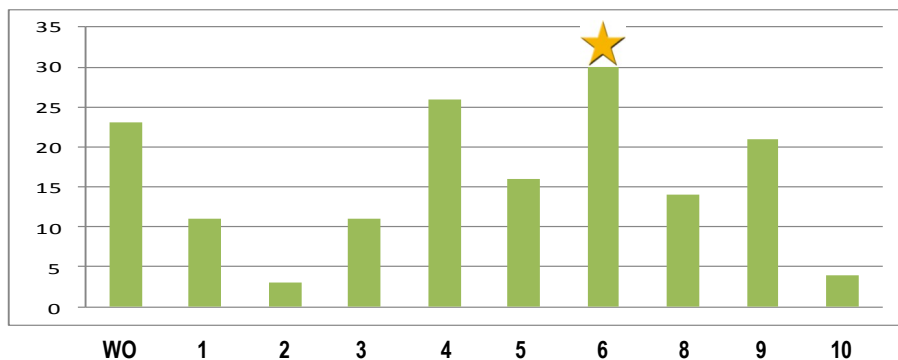
Sue Prada, Ethics Specialist Tel: 301-504-1467

Julia Cypriano, Ethics Assistant Tel: 301-504-4414

Science Ethics Branch Website:

<http://www.usda-ethics.net/science/topic-index/index.htm>

Ethics By the Numbers: Who is asking Ethics Questions?



Questions from WO and Regions from Sept 2010 thru Feb 2011